FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MPA/150952

PRELIMINARY RECITALS

Pursuant to a petition filed July 29, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services' Office of the Inspector General to deny speech language therapy services, a hearing was held on September 11, 2013, at Racine, Wisconsin.

The issue for determination is whether Petitioner's provider has submitted evidence sufficient to demonstrate that a prior authorization request for a speech language therapy (SLT) evaluation and various SLT therapies meets the criteria necessary for payment by the Wisconsin Medical Assistance Program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Theresa Walske, MS, CCC-SLP
Office of the Inspector General (OIG)
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:
David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. A prior authorization request (PA) seeking Medicaid payment for 12 sessions of speech language therapy (SLT) at a frequency of once per week was filed on behalf of Petitioner by his provider

Medical Support Services, Inc. on or about June 14, 2013. The therapy was to start June 7, 2013 and was noted on the PA to cost $1774.20.

3. Petitioner is 9 years of age (DOB 09/13/04). His diagnosis includes Down Syndrome. He does receive SLT through the school system but there was no school for the summer of 2013. In essence the goals for the 2013 therapy were aimed at improving speech intelligibility. To the date of this request the Medicaid program has provided 414 speech language therapy sessions.

4. The Department denied this PA contending that the evidence does not show that requested SLT has been demonstrated to be medically necessary nor that prior SLT has produced measurable results or the ability to carry over gains from prior SLT.

DISCUSSION

Speech therapy is covered by MA under *Wis. Admin. Code, §DHS 107.18*. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. *Wis. Admin. Code, §DHS 107.18(2)(b*). After that, PA for additional treatment is necessary. If PA is requested, it is the provider's responsibility to justify the need for the service. *Wis. Admin. Code, §DHS 107.02(3)(d)6.* If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784.

When determining whether to approve therapy, the Department must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §DHS 107.02(3)(e)*:

> (e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:
> 1. The medical necessity of the service;
> 2. The appropriateness of the service;
> 3. The cost of the service;
> 4. The frequency of furnishing the service;
> 5. The quality and timeliness of the service;
> 6. The extent to which less expensive alternative services are available;
> 7. The effective and appropriate use of available services;
> 8. The misutilization practices of providers and recipients;
> 9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
> 10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
> 11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
> 12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

> (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
> (b) Meets the following standards:
> 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
> 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
> 3. Is appropriate with regard to generally accepted standards of medical practice;
> 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
> 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
> 6. Is not duplicative with respect to other services being provided to the recipient;

7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.
Wis. Admin. Code, §DHS 101.03(96m).

Finally,

> (e) *Extension of therapy services.* Extension of therapy services shall not be approved in any of the following circumstances:
> 1. The recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a 6−month period, or the recipient has shown no ability within 6 months to carry over abilities gained from treatment in a facility to the recipient's home;
> …
> *Wis. Admin. Code, § DHS107.18(3)(e).*

The OIG interprets the code provisions to mean that a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention.

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003).* In other words, it is a Petitioner's burden to demonstrate that s/he qualified for the requested continued services by a preponderance of the evidence. It is not the Department's burden to prove that s/he is not eligible.

Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above. It is not enough to demonstrate a benefit; rather, all of the tests cited above must be met.

Both the Department and provider have submitted written arguments of fair length. Exhibits #'s 3 and 4. I am not reproducing them here. After reviewing these and conducting the hearing I conclude that the denial was correct. The general idea of therapy is to work on a problem and then carry over that work to the home. It is not meant to be a long-term service. The change in Petitioner's intelligibility from 2012 to 2013 is subjective and went from 50% to 60% but then only for a trained listener given a known context and there is a lack of documentation to show that that was the result of private therapy. It may just as well be from maturation, school SLT and/or his parents' efforts. Over more than 400 SLT sessions there is a lack of documentation to provide a baseline to show how intelligibility has improved for an untrained listener in an unknown context.

In conclusion I also note that a provider may not charge a recipient for services if a PA is denied unless that recipient has been advised of this before receiving the service. *Wis. Admin. Code, § DHS 106.04(3)(a).*

NOTE: Petitioner's provider will not receive a copy of this Decision form the Division of Hearings and Appeals but Petitioner's parents are free to share it if they so desire.

CONCLUSIONS OF LAW

That Petitioner's provider has not submitted evidence sufficient to demonstrate that a prior authorization request for speech language therapy meets the criteria necessary for payment by the Wisconsin Medicaid Program.

THEREFORE, it is **ORDERED**

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of November, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 11, 2013.

Division of Health Care Access And Accountability